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*Attorneys for Defendants Frontier Airlines, Inc.,
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PETER DELVECCHIA, individually and as
next friend of A.D., a Minor,

Plaintiffs,

v.

FRONTIER AIRLINES, INC., SCOTT
WARREN, REX SHUPE,

Defendants.

Case No.: 2:19-cv-01322-KJD-DJA

**FRONTIER AIRLINES, INC.'S
MOTION FOR PROTECTIVE
ORDER**

**DEFENDANT FRONTIER AIRLINES, INC.'S MOTION FOR
PROTECTIVE ORDER REGARDING EXHIBIT A TO
PLAINTIFFS' SUPPLEMENTAL MOTION FOR SANCTIONS**

Defendant FRONTIER AIRLINES, INC. ("Frontier"), by its undersigned counsel, moves this Court for a protective order pursuant to Fed. R. Civ. P. 26 and LR 26-6 as to certain documents produced in discovery that Frontier designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" pursuant to the Parties' Agreed Protective Order ("Protective Order") entered by the Court on October 10, 2019 (ECF #37). Frontier's Motion is premised on the

1 attached Memorandum of Points and Authorities, the pleadings, and other papers on file in this
2 matter, and any oral argument this Court may entertain.

3 Date: November 16, 2021

Respectfully submitted,

4 **FRONTIER AIRLINES, INC.**

5 /s/ *Brian T. Maye*

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15 **Certification Pursuant to LR 26-6(c)**

16 The current issue is the same one that is the subject of another currently pending motion.

17 On August 20, 2021, Plaintiffs filed their Motion for Sanctions against Frontier, which included
18 as Exhibit A, a series of redacted incident reports and passenger complaints. (ECF #128).

19 Concurrently, Plaintiffs filed a Motion to Seal Exhibit A. (ECF #130). During a meet and confer
20 conference on September 28, 2021, Plaintiffs' counsel stated that he wished to file a supplemental
21 motion with the Court to include additional incident reports that had been produced by Frontier.

22 Those incident reports are the subject of the present motion and Plaintiffs' Third Motion for
23 Leave to File Exhibit Under Seal (ECF #142). During the discovery conference, counsel for
24 Frontier offered to stipulate that the Court's ruling as to the previously filed motion to seal would
25 also extend to the supplemental production. Plaintiffs' counsel declined, indicating that he wished
26 to have the additional documents before the Court. Given the issue is currently pending before the
27
28

1 Court, Frontier believes that any further discussions would not be fruitful and that it has met its
 2 burden to confer with Plaintiffs' counsel pursuant to LR 26-6(c).

3 **FRONTIER'S MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. THE PROTECTIVE ORDER**

5 At the outset of discovery, the Court entered the parties' proposed Protective Order. (ECF
 6 #37). The Protective Order allows either party to designate as confidential any documents
 7 "which a party believes, in good faith, contain sensitive security information, personal health
 8 information, trade secrets, proprietary information, research, technical, commercial, or final
 9 information, or other confidential material..." (ECF #37 at ¶ 1). A party may contest the
 10 applicability of the Protective Order to the material marked as confidential by "notifying the
 11 attorneys for the party producing the material and identifying the material contested." (*Id.* at ¶ 3).
 12 Upon such notification, "the attorneys for the producing party shall have thirty days in which to
 13 make a specific Motion for Protective Order with respect to such material." (*Id.*).

14 Plaintiffs previously challenged Frontier's confidentiality designation of other incident
 15 reports that were filed under seal as Exhibit A to their Motion for Sanctions (ECF #128 & 130).
 16 In their Third Motion to File Under Seal, Plaintiffs again challenge the applicability of the
 17 Protective Order to the documents at issue, claiming that they do not contain 'confidential
 18 information' worthy of protection. *See* ECF # 142. Given Plaintiffs' notice, Frontier now again
 19 seeks a specific protective order, this time with respect to the newly challenged documents.
 20 Given the similarity of the documents, Frontier resubmits the arguments raised in its previous
 21 Motion for Protective Order. (ECF #137).

22 **II. THE CONFIDENTIAL DOCUMENTS**

23 There are 539 pages of documents currently at issue in Plaintiffs' Supplemental Motion
 24 for Sanctions. All of the documents relate to complaints submitted by passengers, claiming that
 25 they faced discriminated by Frontier employees. The documents, and the underlying incidents,

do not pertain to the incident at issue in this lawsuit. Nor do the documents involve or mention either of the Plaintiffs or any of the Frontier employees involved here. None of the facts in those other complaints remotely resemble the facts in this case. The majority of the documents are internal Frontier reports which are kept strictly confidential, and which are not disclosed by Frontier or disseminated publicly in any manner. Given that these documents are considered confidential by Frontier, the passengers involved are ostensibly unaware that these internal reports even exist. The documents include years old complaints of alleged discrimination by passengers against Frontier employees (whose names are identified) and which were previously addressed by Frontier with those involved.¹

III. LEGAL STANDARD

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending. Fed. R. Civ. P. 26(c)(1). The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense...” *Id.* In order to obtain a protective order, “the moving party bears the burden of showing ‘good cause’ by demonstrating harm or prejudice that will result from the discovery. The moving party must demonstrate a ‘particular and specific need’ for the protective order.” *Carreon v. Smith’s Food & Drug Stores*, Case No. 2:18-cv-01933-APG-NJK, 2019 U.S. Dist. LEXIS 30026, at *4 (D. Nev. Feb. 26, 2019) (internal citations omitted).

IV. ARGUMENT

Frontier designated the subject documents as CONFIDENTIAL because they contain personal and sensitive information which Frontier maintains in strict confidence. Disclosing this sensitive information outside the confines of this litigation would have no impact on the

¹ The names and contact information of the passengers involved in the prior incidents have been redacted, which is the subject of a separate motion. (See ECF #128).

1 litigation itself and would only risk harming the individuals identified and Frontier. Plaintiffs
2 have previously admitted that they wish to contact the individuals involved in the other incidents
3 (ECF 128, p. 3-4, 6), but have identified no legitimate basis for doing so. Because federal case
4 law supports Frontier's request that the confidentiality of such documents be maintained, the
5 Court should grant the instant Motion for Protective Order.

6
7 In *Dozier v. Waffle House, Inc.*, the plaintiffs brought discrimination claims asserting that
8 they were denied services because of their race. During discovery, Waffle House produced
9 documents related to (1) its investigation of the subject incident and (2) other customer
10 complaints involving the Waffle House location at issue in the case. 2005 U.S. Dist. LEXIS
11 40245, at *40 (N.D. Ga. May 4, 2005). The plaintiffs thereafter challenged Waffle House's
12 designation of the documents as confidential.

13
14 The court ruled that the documents contained proprietary information reflecting the
15 Company's investigative process and incorporating information from its confidential database. *Id.*
16 at *43. The court determined that the interest in maintaining the confidentiality of these
17 documents outweighed any slight interest the plaintiffs had in collaborating with other Waffle
18 House litigants. *Id.* The court further observed that disclosure of these documents would
19 constitute an invasion of the privacy of Waffle House's customers who utilized the 1-800 number
20 to voice their complaints. *Id.* at *45. "Waffle House has an interest in encouraging customer
21 feedback and, therefore, protecting the privacy of customers." *Id.* Additionally, because the
22 complaints were inflammatory and/or unverified, disclosing them would constitute an
23 unwarranted invasion of the employees' privacy. *Id.* The *Dozier* court upheld the confidential
24 designation and rejected the plaintiffs' request for public disclosure of documents related to prior
25 complaints involving the subject store.

26
27 Similarly, in *Abreu v. New Jersey*, the plaintiff sought materials relating to complaints of
28 discrimination and retaliation made by other employees of the defendants. 2015 U.S. Dist. LEXIS

1 172621, at *18-20 (D.N.J. Dec. 29, 2015). The defendants objected to the production of those
2 materials because they (1) “implicate[d] the privacy interests of non-parties;” and (2) to the extent
3 they related to facilities other than that at which the plaintiff worked, such information was not
4 relevant. *Id.* The court agreed, ruling that only complaints involving the facility at which the
5 plaintiff worked were discoverable, and the production of those complaints would be subject to a
6 protective order. *Id.* at *20. Further, the court found that the plaintiff had only demonstrated a
7 need to learn about the *nature* of the complaints in question. Because the plaintiff failed to show
8 a need for the *specific identities* of any of the complainants, the Court directed that the materials
9 be produced in redacted form. *Id.*

11 The courts in *Dozier* and *Abreu* upheld confidentiality protections for documents with
12 similar, if not lesser, potentially negative ramifications than the Frontier documents at issue here.
13 Consistent with both cases, the privacy interests of the non-parties identified in the subject
14 documents here would be significantly implicated. The subject documents reveal the names of
15 (1) Frontier employees and passengers² who were involved in suspected trafficking incidents,
16 and (2) Frontier employees who were the subjects of highly inflammatory and disputed customer
17 complaints. Public disclosure of the documents, and thus of the individual identities contained
18 therein, could cause undue and wholly unnecessary hardship to those individuals, who are not
19 parties to this litigation.

21 Public disclosure of documents concerning other incidents of alleged discrimination, and
22 how Frontier handled its investigation and the individuals involved, could also result in
23 unwarranted and unnecessary negative commercial repercussions to Frontier. Frontier’s interest
24 in maintaining the confidentiality of its internal confidential reports describing wholly unrelated
25

27 ² The names of the passengers involved in the prior incidents have been redacted, which is the subject of a separate
28 motion. (*See* ECF #128).

1 incidents and demonstrating how Frontier addressed those situations in accordance with their
2 internal policies and procedures, greatly outweighs any interest that would be served by publicly
3 disclosing these documents. *See Gillum v. ICF Emergency Mgmt. Servs., L.L.C.*, No. 08-314-C-
4 M2, 2009 U.S. Dist. LEXIS 60693, at *33-34 (M.D. La. July 16, 2009) (to protect the privacy of
5 the employees who filed complaints, the information shall be produced subject to the protective
6 order); *see also Republic Servs. v. Liberty Mut. Ins. Cos.*, No. 03-494-KSF, 2006 U.S. Dist.
7 LEXIS 38752, at *22 (E.D. Ky. June 9, 2006) (good cause established for the entry of a protective
8 order relating to claims handling and training materials). Under the balancing standard, the district
9 judge must compare the hardship to the party against whom discovery is sought against the
10 probative value of the information to the party. *Dozier*, 2005 U.S. Dist. LEXIS 40245, at *41.
11 Moreover, maintaining the confidentiality of these documents would not hinder Plaintiffs' ability
12 to prosecute their case in any way.
13

14
15 In addition to factors discussed above, courts cannot overlook the public's interest in
16 maintaining the privacy of personal information disclosed during investigations and held by
17 others. The public has a wide-reaching interest in (1) maintaining the confidentiality of
18 documents that involve protecting people who provide information to investigators, and (2)
19 protecting the integrity of the investigative process, itself. *McKenna v. City of Phila.*, 2000 U.S.
20 Dist. LEXIS 15735, at *6-7 (E.D. Pa. Sep. 29, 2000). Here, the public's interests are aligned with
21 the interests of the individuals who were involved in reporting and responding to the incidents of
22 suspected human trafficking. Both the public and the individuals have a strong interest in
23 maintaining the confidentiality of these records. *See Rosenblit v. City of Phila.*, No. 20-3121-
24 KSM, 2021 U.S. Dist. LEXIS 16042, at *11 (E.D. Pa. Jan. 28, 2021) ("The interests of the
25 plaintiff with regard to...complaints with the EEOC cannot overcome the privacy and safety
26 interests that the [d]efendants and the public have in their confidentiality."). The candor of people
27 providing information related to investigations of illegal and discriminatory conduct is essential to
28

the investigative process, and “could ‘chill’ such candor in the future.” *McKenna*, 2000 U.S. Dist. LEXIS 15735, at 8*.

In sum, the interests of the individuals discussed above, Frontier, and the general public each weigh heavily in favor of maintaining the confidentiality of the subject documents. The Court should grant the instant Motion for Protective Order.

V. CONCLUSION

For the foregoing reasons, Defendant, Frontier Airlines, Inc. requests that this Court enter a protective order maintaining the confidentiality of the documents in Exhibit A to Plaintiffs’ Supplemental Motion for Sanctions, and for such further relief as this Court deems just and reasonable.

DATED this 16th day of November, 2021

Respectfully submitted,

FRONTIER AIRLINES, INC.

/s/ Brian T. Maye

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2021, I caused the foregoing to be electronically filed with the United States District Court for the District of Nevada using the CM/ECF system.

/s/ Brian T. Maye

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